

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED

DEC 15 2016


CLERK

JERAD PAUL ROGGENBAUER,

Plaintiff,

vs.

DAN LIMOGES, Sheriff at Union County
Jail in his individual and official
capacity,

Defendants.

4:15-CV-04156-LLP

ORDER DISMISSING CASE

Plaintiff, Jerad Paul Roggenbauer, is an inmate at the South Dakota State Penitentiary in Sioux Falls. He filed this lawsuit pursuant to 42 U.S.C. § 1983, Docket 1, and later amended his complaint. Docket 14. On January 21, 2016, Roggenbauer moved to extend the time to serve defendants. Docket 33. The Court granted this motion and ordered him to serve defendants within 60 days. Docket 39. On May 18, 2016, the mail sent to Roggenbauer was returned as “refused.” Docket 40.

“Under Rule 4(m), a district court must engage in a two-step analysis of motions to dismiss a complaint premised upon untimely service of process.” *Colasante v. Wells Fargo Corp.*, 81 F. App’x 611, 612 (8th Cir. 2003). The Court first inquires “whether the plaintiff has demonstrated good cause for his failure to serve within the prescribed . . . period.” *Id.* Here, Roggenbauer has not made any demonstration of good cause. Even though “good cause is not shown, the

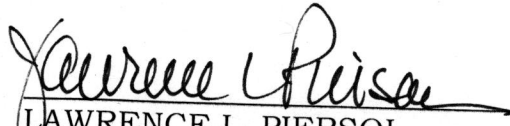
district court still retains the discretion to grant an extension of the time for service.” *Id.* at 613 (citing *Adams v. AlliedSignal Gen. Aviation Avionics*, 74 F.3d 882, 887 (8th Cir. 1996)). “To warrant such a permissive extension, a plaintiff must demonstrate excusable neglect.” *Id.* (citing *Coleman v. Milwaukee Bd. of Sch. Dirs.*, 290 F.3d 932, 934 (7th Cir. 2002)). Here, Roggenbauer has not demonstrated excusable neglect. Therefore, his complaint is dismissed for failure to serve.

Accordingly, it is

ORDERED that Roggenbauer’s amended complaint (Docket 14) is dismissed without prejudice for failure to serve defendants.

Dated December 15, 2016.

BY THE COURT:


LAWRENCE L. PIERSOL
UNITED STATES DISTRICT JUDGE